U.S. Department of Homeland Security
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Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

B5

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 09 2009

EAC 06 066 53241

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. On the Form I-140 petition, the petitioner indicated that he seeks employment as a "Lab Assistant III," which was the title he held at the University of California (UC), Riverside, from 2003 to 2005. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but denied the application for a national interest waiver.

On appeal, the petitioner submits a statement and various exhibits.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner, who holds a master's degree from Nanjing Agricultural University, qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

We note that 8 C.F.R. § 204.5(m)(4)(ii) specifically requires the submission of a completed Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The petitioner has not submitted this required document. The director did not note this omission in the decision. In the interest of

thoroughness, the AAO will review the merits of the petitioner's national interest waiver claim, but the petitioner has not properly applied for the waiver.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The evidence included in the petitioner's initial submission on December 29, 2005 mostly established his educational background. In a letter dated July 19, 2005, [redacted], an associate environmental research scientist at the California Environmental Protection Agency, stated:

> [The petitioner] worked for me at the University of California, Department of Entomology between February 2003 and June 2004. Since he left my laboratory, [the petitioner] and I have continued to work together as colleagues in cooperative projects at

> UC Riverside until two months ago when I accepted a position with the California Environmental Protection Agency, Department of Pesticide Regulation.
>
> [The petitioner] is a very highly trained scientist with extensive research and technical expertise in insect toxicology, biochemistry, and field ecology relevant to pest management. [The petitioner] has been awarded an advanced degree and has been continuously employed in the field of insect toxicology and pest management for more than five years in increasingly responsible positions. He is both competent and diligent and is a great asset to our community.

In a November 23, 2004 letter, [redacted] of the Department of Entomology at UC Riverside stated:

> This is in response to a recent request for a letter of recommendation from [the petitioner] who is working in my laboratory for the last 5 months. . . .
>
> [The petitioner] is an enthusiastic employee and is always willing to pitch in to help the team to get the job done. . . . He is efficient in projects that are assigned to him with little supervision. He makes an effort to improve his skills in running bioassays and other related field projects. . . .
>
> I would recommend him as a candidate in any research-oriented projects.

The letters quoted above attest to the petitioner's competence in the laboratory, but they do not establish that the petitioner stands out in his field and thereby warrants the special benefit of a national interest waiver. One does not qualify for the waiver simply by being properly trained in a particular occupation or field of endeavor. A plain reading of the statutory language, quoted earlier in this decision, shows that a member of the professions holding an advanced degree is, typically, subject to the job offer requirement.

The petitioner submitted copies of four articles that the petitioner co-wrote, and which appeared in Chinese-language journals in 2000 and 2001. (One of the articles is undated.) Two of the articles include English titles and abstracts; both of these articles related to insecticide resistance in the rice stem borer. The petitioner did not indicate, at the time of filing, that he had engaged in any published research after he arrived in the United States in 2002.

On February 17, 2007, the director notified the petitioner of the director's intent to deny the petition, on the grounds that the petitioner had not submitted evidence of eligibility for the waiver. In response, the petitioner submitted a personal statement. The petitioner repeats many of the same assertions on appeal, and we will consider them in that context.

The petitioner submitted a letter from [redacted], a senior scientist at the University of Maryland Biotechnology Institute, who stated:

> [The petitioner] was my classmate and good friend while we were in college and graduate school since 1989. He is a very industrious and dependable person. He is very interested in biology, especially his own major entomology. When he was an undergraduate student, he volunteered for more than a year to work in the laboratory of Insect Physiology and Biochemistry and learnt many basic histology and biochemistry techniques. He set up a toxicology-bioassay laboratory by himself while he was pursuing his M.S.

Like the previous letters, letter attests to the petitioner's basic competence in entomology but does not set him apart from others in that field.

The petitioner did not indicate that he had performed any research work after he left UC Riverside. [redacted], owner of [redacted] stated that the petitioner is "an employee working in my store ever since October, 2006." This employment does not readily reflect significant demand for the petitioner's professional services in entomology or related fields.

A letter from [redacted] of Johns Hopkins University contains more detail about the petitioner's research work, characterizing the petitioner as "very ambitious." [redacted] stated: "I believe that his great interest in neuroscience will lead him to a bright future." In the letter, [redacted] also stated: "I have known [the petitioner] since 1997 while we both worked as graduate students at the Department of Entomology, Nanjing Agricultural University," but [redacted] omitted to mention that she is also the petitioner's spouse.

The petitioner showed that he had applied to enter doctoral programs at several universities in the United States, and that he had been accepted at Kansas State University but was unable to attend due to family commitments in Maryland. Ongoing graduate study is not a basis for a national interest waiver. An alien may obtain an F-1 nonimmigrant visa to study in the United States; a temporary program of study does not warrant or justify permanent immigration benefits.

The director denied the petition on July 9, 2007. The director noted the petitioner's failure to submit an evaluation of his master's degree from China, and found that the petitioner had not established eligibility for the national interest waiver. On appeal, the petitioner submits an evaluation of his degree, establishing its equivalence to a master's degree from a regionally accredited U.S. university. This evidence establishes that the petitioner, who has stated his intent to engage in a profession in the United States, holds an advanced degree.

The remaining ground for denial is not so easily overcome. Prior to the denial of the petition, the petitioner established some credentials in the field of entomology, but the petitioner's choice of occupation is not, by itself, grounds for a waiver. The plain wording of the statute shows that an alien member of the professions holding an advanced degree is, typically, subject to the job offer requirement.

On appeal, the petitioner discusses his academic and employment history. The petitioner does not show that his work in China or the United States has stood out in any discernible way from that of others in the field. The petitioner repeats his assertion that he was unable to continue his doctoral studies because of family obligations in Maryland. There are universities in Maryland where the petitioner could have pursued those studies, such as Johns Hopkins University and the University of Maryland, but the petitioner states only that he "got interviewed" at those institutions. There is no indication that these efforts led to acceptance into a doctoral program. Also, as evidence that his "service is actually sought by different employers in the U.S.," the petitioner submits a list of university professors said to have interviewed him. If these interviews did not result in employment offers – and there is no evidence that they did – then the list shows only that the petitioner is seeking employment, not that the universities are seeking his services.

The petitioner submits documentation showing that he has received training as a Microsoft SQL Server Database Administrator. The petitioner makes no attempt to link this training to his past work in entomology or his professed interest in neuroscience. The record, therefore, shows that the petitioner has had difficulty securing either employment or further education in his chosen field of entomology, and therefore he has worked at a grocery store and sought computer training unrelated to entomology. This does not support the petitioner's claim that his services are in demand at U.S. universities.

Regarding his past track record, the petitioner stated:

> Many American Citizens can do better under my situation, BUT THE POTENTIAL OF A PETITIONER, I believe, should be taken into account when a final decision is made. After all, [because the] United States holds the most advanced science and technologies in almost all research fields today, only a very few . . . immigrants can be "perfectly equipped already" with a background that outweighs most Americans, at the time when they first arrived in the United States.

(Emphasis in original.) The petitioner did not explain how the director could judge the petitioner's "potential" without looking at his "past and current" achievements. Because the petitioner's future work is not yet available for review, we can only extrapolate from what the petitioner has done and is doing. In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest. *Matter of New York State Dept. of Transportation* at 219, n.6.

We do not dispute the petitioner's assertion that "very few" aliens arrive in the United States "perfectly equipped" to qualify for the waiver. From the statute, it is clear that the national interest waiver is not intended to be widely used. It is, instead, a special exemption from requirements that normally apply to the immigrant classification that the petitioner has chosen to seek. With respect to the petitioner's assertion that most aliens do not qualify for the waiver "when they first arrived in the United States," we note that the petitioner arrived in the United States more than three years before he applied for the waiver, having spent much of the intervening period working for a well-regarded university. Whatever circumstances may have intervened that prevented the petitioner from

completing his doctorate and accumulating higher-level experience and expertise in his desired field, it remains that we can only look at the qualifications that the petitioner possesses now, not the qualifications he wishes to have or hopes to earn in the future. An alien seeking an employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971)

The petitioner establishes that his spouse is the beneficiary of another petition, through which she qualified for the national interest waiver. Any proceeding arising from that approval, including the disposition of any adjustment application filed by the petitioner or his spouse, lies outside the scope of the present proceeding.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee. This decision is also without prejudice to any proceeding arising from the approval of any separate petition filed by or on behalf of the petitioner's spouse.

ORDER: The appeal is dismissed.